IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

GERALD A. RIEFLIN, Petitioner, vs. JOHN F. AULT, Warden, Respondent.	No. C00-0011-MWB **MEMORANDUM OPINION AND ORDER REGARDING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION ON PETITION FOR WRIT OF HABEAS CORPUS**

TABLE OF CONTENTS

I. INTRODUCTION AND BACKGROUND

Before the court is a petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254. Petitioner, Gerald A. Rieflin, is an inmate at the Anamosa State Penitentiary, Anamosa, Iowa. On May 29, 1997, following a jury trial, petitioner Rieflin was convicted of two counts of first-degree murder and two counts of assault with intent to inflict serious injury. The parties do not dispute the following underlying facts surrounding Rieflin's conviction as described by the Iowa Supreme Court:

> In January 1995, Rieflin shot and killed two co-workers and wounded two other co-workers at the Ralston Foods plant in Cedar Rapids, Iowa. The shootings occurred in the presence of numerous onlookers. Rieflin was charged with two counts of first-degree murder, in violation of Iowa Code sections 707.1 and 707.2 (1993), and two counts of attempted murder, in violation of Iowa Code sections 707.11 and 902.7.
>
> In February, following Rieflin's request for a medical evaluation at State expense, psychologist Dan Rogers examined him. Upon completion of his evaluation, Rogers prepared a psychological assessment report. In his report, Rogers concluded that Rieflin suffered from paranoid schizophrenia and, at that time, was incapable of assisting in his own defense. At a hearing on July 25, the district court held that, based upon Roger's report, there should be a hearing to determine Rieflin's competency to stand trial. The court ordered him to be evaluated at the Iowa Medical and Classification Center in Oakdale. On August 16, Rieflin filed a notice of defense of insanity and diminished responsibility. See Iowa R. Crim. P. 10(11)(b)(1).
>
> Rieflin remained at Oakdale for an extended period and was evaluated and treated by psychiatrist R.T. Lara and clinical director P.L. Loeffelholz. They also diagnosed Rieflin as paranoid schizophrenic but found him competent to stand trial. At the competency hearing in December, defense counsel stated that as long as Rieflin is on medication that is administered properly, he is able to communicate and assist with his defense. Following the hearing, the district court concluded that Rieflin was competent to stand trial. The court relied, in part, on Lara's report, which stated:

> [Rieflin] does not have any intrusive mental condition which would prevent him from fulfilling the criteria established by the [Iowa] Code. Despite his diagnosis, he knows what he is charged with, knows the proceedings as explained to him, can meaningfully cooperate with counsel in his own defense, and can enter a thoughtful plea of his choosing.

In January 1996, Rieflin was evaluated by a psychiatrist of his own choosing, Dr. William Logan. After spending approximately three hours with him, Logan concluded that Rieflin was paranoid schizophrenic and incompetent to stand trial. Specifically, Logan stated that Rieflin continues to have delusions which affect his perception of the legal proceedings, and that his antipsychotic medication was not adequate to control his symptoms. Rieflin then requested another competency hearing, which was held on April 12. At this hearing, Logan's report was admitted into evidence. Also, the State presented the testimony of three witnesses: Nurse Jan Dolley, Dr. Mark Pospisil, and Sergeant John Hrmidko. The district court again issued an order, finding Rieflin competent to stand trial. The court stated:

There simply is no evidence presented in the record that the defendant is incapable of effectively assisting in his own defense. The only intellectual problem attributed to the defendant is his belief that he will be subject to attack by demons and that the deity will intervene in his behalf with the jury. The defendant's own expert acknowledges that the defendant's cognitive capacity is intact and that he understands that he is charged with murder and that he is at the Linn County Jail and that he understands the roles of the different participants in the proceeding. There is no indication that the defendant's recollection of the events which form the basis of the charge is impaired. In summary, there simply is no evidence that the defendant's mental condition has changed in any respect since the last time an order was entered concerning the defendant's competency.

Another hearing was held on April 26, during which defense counsel made a professional statement expressing his

> belief that Rieflin was incompetent. In its order, the district court denied Rieflin's motion to reconsider the prior ruling on competency and denied Rieflin's motion to change the judge. On May 9, we granted Rieflin's application for discretionary review and stayed all further proceedings in the district court.

State v. Rieflin, 558 N.W.2d 149, 150-51 (Iowa 1996), *cert. denied*, 520 U.S. 1216 (1997). The Iowa Supreme Court concluded that the district court had not erred in finding that Rieflin was competent to stand trial as well as an evidentiary issue concerning the admission of certain evidence at the competency hearings which Rieflin claimed violated his physician-patient privilege. *Id.* at 153. The following undisputed facts, as found by the Iowa Court of Appeals, occurred in the Iowa District Court following the remand from the Iowa Supreme Court:

> Procedendo issued on January 8, 1997. On the same date, the Supreme Court denied Rieflin's motion to stay further proceedings. Trial was scheduled by the district court judge for May 12, 1997.
>
> On January 13, 1997, Rieflin filed an application seeking an additional evaluation by William S. Logan, M.D. Defense counsel stated concern that Rieflin's condition had deteriorated during the appeal process. Proceedings were held on said application on January 24, 1997. The following colloquy between the district court and defendant's counsel took place:
>
> > THE COURT: You are requesting that be set for hearing?
> > MR. PARRISH: I ask the court to rule on it.
> > THE COURT: You want a ruling done on what has been filed?
> > MR. PARRISH: Yes.
> > THE COURT: I will find that and do that then.
> > MR. PARRISH: All right.
> > ....
> > THE COURT: Okay. Do you anticipate needing another hearing or is this something you want to discuss now?

> MR. PARRISH: I want to discuss it now particularly in light of the trial date in May. . . . We believe, Your Honor, that due to the delay, due to the fact that he is still suffering from this disease, he has not been given anything but medication for it, that in order to appear for the trial he needs to be reexamined and opinion delivered to the court to see whether or not at this point he is still competent to stand trial. . . . The nature of his mental disease is his condition varies. I think to go to trial we need to know what his status is now. *That's the only argument I want to make with regard to that. I don't believe it's necessary to present any evidence or offer any professional statement on the issue*. (Emphasis added.)

The district court issued a ruling on February 20, 1997, denying the application for an additional evaluation. The ruling states:

> The motion for the psychiatric evaluation is filed by the defendant less than a month after the Iowa Supreme Court filed its ruling that the defendant was competent to stand trial. There is nothing in the application for psychiatric evaluation to indicate any change in the defendant's condition from the time of the last evaluation which led to my order of April 17, 1996, finding the defendant competent.
>
> ….
>
> It does not, based on the information provided in the application filed by the defendant, reasonably appear that the defendant's condition is any different from what it was at the time of the last hearing.
>
> IT IS, THEREFORE, ORDERED that the application for psychiatric evaluation filed by the defendant on January 13, 1997, is denied.

State v. Rieflin, 589 N.W.2d 749, 751-52 (Iowa Ct. App. 1998)

On May 12, 1997, trial was commenced and a guilty verdict was returned on May 29,

1997. On June 4, 1997, Rieflin was sentenced to life imprisonment on each of his murder convictions and indeterminate sentences of up to two year imprisonment on each of his assault with intent to inflict serious injury convictions.

Petitioner Rieflin appealed his convictions. The Iowa Court of Appeals affirmed his convictions on November 30, 1998. *Rieflin*, 589 N.W.2d at 753. On January 20, 2000, Rieflin filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Rieflin's petition asserts one ground for relief: that his rights to due process under the Fifth and Fourteenth Amendments to the United States Constitution were violated when he was tried while incompetent to stand trial.

This case was referred to United States Magistrate Judge Paul A. Zoss pursuant to 28 U.S.C. § 636(b)(1)(B). On June 20, 2001, Judge Zoss filed a thorough and comprehensive Report and Recommendation in which he recommends that Rieflin's petition be denied. Rieflin filed objections to Judge Zoss's Report and Recommendation on July 27, 2001. The court, therefore, undertakes the necessary review of Judge Zoss's recommended disposition of Rieflin's petition for a writ of habeas corpus.

II. ANALYSIS

A. Standard Of Review

Pursuant to statute, this court's standard of review for a magistrate judge's Report and Recommendation is as follows:

> A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for

review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made, as follows:

> The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

The Eighth Circuit Court of Appeals has repeatedly held that it is reversible error for the district court to fail to conduct a *de novo* review of a magistrate judge's report where such review is required. *See, e.g., Hosna v. Groose*, 80 F.3d 298, 306 (8th Cir.) (citing 28 U.S.C. § 636(b)(1)), *cert. denied*, 519 U.S. 860 (1996); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (citing *Belk v. Purkett*, 15 F.3d 803, 815 (8th Cir. 1994)); *Hudson v. Gammon*, 46 F.3d 785, 786 (8th Cir. 1995) (also citing *Belk*). Because objections have been filed in this case, the court must conduct a *de novo* review. With these standards in mind, the court will briefly review the requirements of the federal habeas corpus statute, 28 U.S.C. § 2254(d)(1) and then turn to consider petitioner Rieflin's objections to Judge Zoss's Report and Recommendation.

B. The Requirements of § 2254

1. Section 2254(d)(1)

Section 2254(d)(1) of Title 28, as amended by the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, provides as follows:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the

adjudication of the claim—

> (1) resulted in a decision that was *contrary to*, or involved *an unreasonable application of*, clearly established Federal law, as determined by the Supreme Court of the United States[.]

28 U.S.C. § 2254(d)(1) (emphasis added). As the United States Supreme Court explained in *Williams v. Taylor*, 529 U.S. 362, 403 (2000), "[F]or [a petitioner] to obtain federal habeas relief, he must first demonstrate that his case satisfies the condition set by § 2254(d)(1)." *See id.*

In *Williams*, the Supreme Court addressed the question of precisely what the "condition set by § 2254(d)(1)" requires. *See id.* at 374-390 (Part II of the minority decision); *id.* at 402-12 (Part II of the majority decision).[1] In the portion of the majority decision on this point, the majority summarized its conclusions as follows:

> [Section] 2254(d)(1) places a new constraint on the power of a federal habeas court to grant a state prisoner's application for a writ of habeas corpus with respect to claims adjudicated on the merits in state court. *Under § 2254(d)(1), the writ may issue only if one of the following two conditions is satisfied*—the state-court adjudication resulted in a decision that (1) "was contrary to . . . clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "involved an unreasonable application of . . . clearly established Federal law, as determined by the Supreme Court of the United States." *Under the "contrary to" clause*, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this

[1] In *Williams*, the opinion of Justice Stevens obtained a 6-3 majority, except as to Part II, which is the pertinent part of the decision here. *See Williams*, 529 U.S. at 367. Justice O'Connor delivered the opinion of the Court as to Part II, in which she was joined by Chief Justice Rehnquist and Justices Kennedy, Thomas, and Scalia, thereby obtaining a 5-4 majority on this portion of the decision. *See id.*

> Court has on a set of materially indistinguishable facts. *Under the "unreasonable application" clause,* a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case.

Id. at 413 (emphasis added); *see also Whitmore v. Kemna*, 213 F.3d 431, 433 (8th Cir. 2000) ("It seems to us that § 2254(d) as amended by the AEDPA is unambiguous as to the scope of federal court review, limiting such review (at least as compared with past practice) in order to effect the intent of Congress to expedite habeas proceedings with appropriate deference to state court determinations. *See Williams v. Taylor*, 529 U.S. 362, 403 (2000) (noting purposes of AEDPA amendments).").

The Court also clarified two other important definitions. First, the Court concluded that "unreasonable application" of federal law under § 2254(d)(1) cannot be defined in terms of unanimity of "reasonable jurists"; instead, "the most important point is that an unreasonable application of federal law is different from an incorrect application of federal law." *Id.* at 4030 S. Ct. at 1522. Consequently, "[u]nder § 2254(d)(1)'s 'unreasonable application' clause, . . . a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be [objectively] unreasonable." *Id.* Second, the Court clarified that "clearly established Federal law, as determined by the Supreme Court of the United States" "refers to the holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision," and "the source of clearly established law [is restricted] to this Court's jurisprudence." *Id.* at 1523.

2. Section 2254(d)(2)

Section 2254(d)(2) of Title 28, as amended by the AEDPA, provides as follows:

> (d) An application for a writ of habeas corpus on behalf

> of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> . . . .
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d)(2). Thus, § 2254(d)(2) prohibits the grant of a writ of habeas corpus unless the adjudication of the claim resulted in a decision based on an unreasonable determination of the facts. Under 28 U.S.C. § 2254(e)(1), however, "a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1). The Ninth Circuit Court of Appeals has stated that "a state court factual determination is unreasonable if it is 'so clearly incorrect that it would not be debatable among reasonable jurists.'" *Jeffries v. Wood*, 114 F.3d 1484, 1500 (9th Cir.1997) (quoting *Drinkard v. Johnson*, 97 F.3d 751, 769 (5th Cir.1996), cert. denied, 520 U.S. 1107 (1997), *overruled on other grounds by Lindh v. Murphy*, 521 U.S. 320 (1997)), *cert. denied*, 522 U.S. 1008 (1997). For "more debatable factual determinations, 'the care with which the state court considered the subject' may be important." *Id.* (quoting *Lindh v. Murphy*, 96 F.3d 856, 871 (7th Cir. 1996) (en banc), *rev'd on other grounds*, 521 U.S. 320 (1997)).

C. Discussion

The court will address each of petitioner Rieflin's objections to Judge Zoss's Report and Recommendation *seriatim*.

1. Denial of psychiatric evaluation

Initially, petitioner Rieflin objects to the conclusion in Judge Zoss's Report and

Recommendation that the Iowa District Court's decision to not provide Rieflin with another competency evaluation and hearing following the Iowa Supreme Court's remand was based on a reasonable determination of the facts in light of the evidence. A defendant has a due process right not to be tried while incompetent. *Cooper v. Oklahoma*, 517 U.S. 348, 355 (1996); *Medina v. California*, 505 U.S. 437, 453 (1992); *Drope v. Missouri*, 420 U.S. 162, 171-72 (1975); *Pate v. Robinson*, 383 U.S. 375, 385 (1966). To be competent to stand trial, a defendant must have "'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding . . . [and] a rational as well as factual understanding of the proceedings against him.'" *Cooper*, 517 U.S. at 355 (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam). Due Process requires the trial court to inquire *sua sponte* as to the defendant's competence in every case in which there is a reason to doubt the defendant's competence to stand trial. *Drope*, 420 U.S. at 173 (finding state statute, which required a court to grant competency hearing *sua sponte* if there was "reasonable cause to believe" that the defendant was incompetent, comported with due process, and that trial court's failure to hold hearing despite indicia of incompetence violated defendant's right to fair trial); *Pate*, 383 U.S. at 385 (holding that failure to hold competency hearing violated due process where state statute required trial court to order hearing where there was "reason to doubt" defendant's competency, and the evidence was sufficient to put the trial court on notice of potential problem).

Here, the Iowa District Court determined that Rieflin was not entitled to another psychiatric evaluation because Rieflin had not presented the court with evidence indicating that there had been a change in Rieflin's condition from the time of the last evaluation. *Rieflin*, 589 N.W.2d at 751. This court must presume the state court finding is correct, and Rieflin has the burden of rebutting the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1). Rieflin fails to meet this burden. Although Rieflin points to allegations made by his counsel in his application, before the Iowa District Court,

that his counsel was concerned that Rieflin's condition had deteriorated during the passage of time required for the appeal to the Iowa Supreme Court, Rieflin did not buttress these assertions with any actual new evidence. *See Rieflin*, 589 N.W.2d at 751-52 (defense counsel stated that "I don't believe it's necessary to present any evidence or offer a professional statement on the issue."). Given this record, the Iowa District Court's factual finding is reasonable. Therefore, this objection is overruled.

2. Competency to stand trial

Next, petitioner Rieflin objects to the conclusion in Judge Zoss's Report and Recommendation that the Iowa District Court's decision that Rieflin was competent as of April 1996 was based on a reasonable determination of the facts in light of the evidence. Rieflin argues that Dr. Logan provided the court with "good reason" to conclude that Rieflin was incompetent to stand trial and that the Iowa District Court's determination to the contrary cannot be upheld as reasonable given Dr. Logan's expertise.

Here, the Iowa District Court determined that Rieflin was competent to stand trial. Competency to stand trial is a factual question. *See O'Rourke v. Endell*, 153 F.3d 560, 567 (8th Cir. 1998); *see also Bryson v. Ward*, 187 F.3d 1193, 1201 (10th Cir. 1999), *cert. denied sub nom. Bryson v. Gibson*, 529 U.S. 1058 (2000); *United States v. Boigegrain*, 155 F.3d 1181, 1189 (10th Cir. 1998), *cert. denied*, 525 U.S. 1083 (1999); *Vargas v. Lambert*, 159 F.3d 1161, 1168 (9th Cir. 1998); *Oats v. Singletary*, 141 F.3d 1018, 1025 (11th Cir. 1998); *Moody v. Johnson*, 139 F.3d 477, 481 (5th Cir. 1998); *Estock v. Lane*, 842 F.2d 184, 186 (7th Cir. 1988). Thus, the Iowa District Court's competency determination is presumptively correct. 28 U.S.C. § 2254(e). Rieflin has the burden of showing, by clear and convincing evidence, that this presumption should not apply. *Id.*; *see Bryson*, 187 F.3d at 1201 The court finds that Rieflin has not met his burden. The decision of the Iowa District Court is eminently reasonable in light of Dr. Lara's report and the evidence presented at the April 12, 1996, hearing. Dr. Lara had personal knowledge of Rieflin's

condition and was of the opinion that Rieflin was competent to stand trial. The Iowa District Court had the opportunity to observe Rieflin's demeanor and evaluate Rieflin. Moreover, Rieflin's expert witness, Dr. Logan, had evaluated Rieflin for only three hours. The Iowa District Court had the opportunity to evaluate Dr. Logan's credibility. This court is unable to say in light of all the circumstances that the Iowa District Court determination that Rieflin was competent to stand trial was an unreasonable applications of the facts. Therefore, this objection is overruled.

3. Burden of proving incompetence

Finally, petitioner Rieflin objects to the conclusion in Judge Zoss's Report and Recommendation that the Iowa Supreme Court did not heighten his burden of proof for demonstrating incompetence. The Iowa Supreme Court applied the test for competency set out by the United States Supreme Court in *Cooper*, 517 U.S. at 355. *Rieflin,* 558 N.W.2d at 152 ("The basic test for competence to stand trial is whether the defendant has the present ability to understand the charges against him or her and communicate effectively with defense counsel."). The Iowa Supreme Court correctly noted that under *Cooper*, defendant Rieflin had the burden of proving his incompetence by a preponderance of the evidence. *Id.* at 152 (citing *Cooper*, 517 U.S. at 355). The fact that the Iowa courts considered the testimony of three non-expert witnesses offered by the state in considering Rieflin's competency does not support Rieflin's argument that an incorrect burden of proof was imposed upon him.

Rieflin also objects to the conclusion in Judge Zoss's Report and Recommendation that the Iowa courts were not unreasonable in considering the testimony of the three state witnesses. The Iowa District Court had the opportunity to evaluate Dr. Logan's credibility as well as the three witnesses put forward by the state. This court is unable to say in light of all the circumstances that the Iowa District Court's factual determinations were unreasonable. Therefore, this objection is overruled.

D. Certificate of Appealability

Rieflin must make a substantial showing of the denial of a constitutional right in order to be granted a certificate of appealability on these three issues. *See Garrett v. United States*, 211 F.3d 1075, 1076-77 (8th Cir. 2000); *Mills v. Norris*, 187 F.3d 881, 882 n.1 (8th Cir. 1999); *Carter v. Hopkins*, 151 F.3d 872, 873-74 (8th Cir. 1998); *Ramsey v. Bowersox*, 149 F.3d 749 (8th Cir. 1998); *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997), *cert. denied*, 525 U.S. 834 (1998). "A substantial showing is a showing that issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings." *Cox*, 133 F.3d at 569. With respect to Rieflin's claims, the court shall not grant a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(3).

III. CONCLUSION

For the reasons delineated above, the court **overrules** petitioner Rieflin's objections to Judge Zoss's Report and Recommendation. Therefore, pursuant to Judge Zoss's recommendation, the petition is **dismissed**. Moreover, the court determines that the petition does not present questions of substance for appellate review. *See* 28 U.S.C. § 2253(c)(2); FED. R. APP. P. 22(b). Accordingly, a certificate of appealability will not issue as to any claim for relief.

IT IS SO ORDERED.

DATED this 11th day of October, 2001.

_____

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA